NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARC DAWSON, Plaintiff, vs. S. LATHAM, et al., Defendants.	No. C 08-00741 JF (PR) ORDER GRANTING MOTION FOR SUMMARY JUDGMENT (Docket No. 31)

Plaintiff, a California prisoner, filed in pro se the instant civil rights action pursuant to 42 U.S.C. § 1983 against Pelican Bay State Prison ("PBSP") officials. The Court found the complaint, when liberally construed, stated a cognizable claim of deliberate indifference to a serious medical need in violation of the Eighth Amendment. Defendants S. Latham, M. Edwards, and B. Jain filed a motion for summary judgment. Plaintiff filed opposition to Defendants' summary judgment motion, and Defendants filed a reply. After reviewing the complaint and all submitted papers, the Court concludes that Defendants are entitled to summary judgment and will GRANT Defendants' motion.

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DISCUSSION

I. Standard of Review

Summary judgment is proper where the pleadings, discovery and affidavits show that there is 'no genuine issue as to any material fact and [that] the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A court will grant summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial . . . since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). A fact is material if it might affect the outcome of the lawsuit under governing law, and a dispute about such a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Generally, the moving party bears the initial burden of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact. See Celotex Corp., 477 U.S. at 323. Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. But on an issue for which the opposing party will have the burden of proof at trial, the moving party need only point out "that there is an absence of evidence to support the nonmoving party's case." Id. at 325. If the evidence in opposition to the motion is merely colorable, or is not significantly probative, summary judgment may be granted. See Liberty Lobby, 477 U.S. at 249-50.

The burden then shifts to the nonmoving party to "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324 (citations omitted). If the nonmoving party fails to make this showing, "the moving party is entitled to judgment as a matter of law." Id. at 323.

The court's function on a summary judgment motion is not to make credibility

determinations or weigh conflicting evidence with respect to a disputed material fact. See T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). The evidence must be viewed in the light most favorable to the nonmoving party, and the inferences to be drawn from the facts must be viewed in a light most favorable to the nonmoving party. See id. at 631. It is not the task of the district court to scour the record in search of a genuine issue of triable fact. Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). The nonmoving party has the burden of identifying with reasonable particularity the evidence that precludes summary judgment. Id. If the nonmoving party fails to do so, the district court may grant summary judgment in favor of the moving party. See id.; see, e.g., Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1028-29 (9th Cir. 2001).

II. Legal Claims and Analysis

Plaintiff alleges that Defendants Latham, Edwards and Jain acted with deliberate indifference to his serious medical needs in connection with wrong medication that was administered to him on June 8, 2006, and the manner in which they treated the resulting physical ailments he suffered thereafter.

A. Statement of Facts

The following facts are undisputed unless otherwise indicated. On June 8, 2006, Defendant S. Latham, a prison pysch tech, came to Plaintiff's cell to deliver his usual dose of Neurontin. Immediately after swallowing the colorless liquid, Plaintiff realized by the taste that it was not Neurontin. Plaintiff told Defendant Latham that the medicine he had just ingested was not Neurontin. Defendant Latham believed it was Neurontin but left the tier to check after Plaintiff insisted that it was not. She returned approximately fifteen minutes later with another dose of medication which she told Plaintiff was Neurontin. Plaintiff took the second dose. Plaintiff does not allege that the second dose was not Neurontin. Plaintiff claims that about thirty minutes later, he began experiencing "disorientation and sleepiness." (Compl. at 5.) Plaintiff slept for the rest of the day.

The following day, June 9, 2006, Plaintiff awoke when a correctional officer came

to escort Plaintiff to group therapy. Plaintiff alleges that he felt disoriented, had blurry vision particularly in his left eye, had "tense muscles," and "felt as if someone was pushing down on his head." (Id.) Within minutes of arriving at group therapy, Plaintiff notified prison staff of his symptoms, and Plaintiff was immediately escorted to the nurse's office. Plaintiff was examined by Dr. Hutchinson, who is not a party to this action, in the presence of Defendant Latham. Plaintiff alleges that he told Dr. Hutchinson about the medication incident from the day before, and that Dr. Hutchinson asked Defendant Latham to identify the first dose of medicine which Plaintiff ingested. Plaintiff alleges that Defendant Latham was unable to identify the medication, and that she informed Dr. Hutchinson that the bottle had been discarded. Dr. Hutchinson prescribed Benadryl and bed rest for Plaintiff. Plaintiff alleges that the rest of June 9, 2006, was "foggy." (Id. at 6.)

On June 10, 2006, the next day, Plaintiff awoke still feeling the effects of the extra medication. Plaintiff alleges that he felt"constant pressure pushing down on his head," muscle spasms, blurred vision and a severe headache. (Id.) Plaintiff alleges that he was seen by Nurse Kirkpatrick, who is not a party to this action. According to Plaintiff, Nurse Kirkpatrick became concerned after taking Plaintiff's vital signs, and ordered Plaintiff to be taken to the Critical Treatment Center ("CTC"). (Id. at 7.) At CTC, Plaintiff was examined by Defendant Nurse Edwards, who prescribed more Benadryl and bed rest. Defendant Edwards advised Plaintiff that she would put him on the next sick-call list. Plaintiff alleges that Defendant Edwards refused to draw blood for tests, believing it was unnecessary. (Id. at 8.) On the same day, the first dose of medication that Plaintiff was given on June 8, 2006, was identified as Haldol, which is an antipsychotic medication used in the treatment of schizophrenia, and more acutely, in the treatment of acute psychotic states and delirium. (Defs.' Mot. at 4.) Haldol can cause sleepiness, dizziness and blurred vision. (Id.)

The next sick-call list was June 13, 2006, but for unknown reasons, Plaintiff was taken off the list. Plaintiff alleges for the first time in opposition that the next sick-call

list was June 12, 2006, according to the notation on a "Interdisciplinary Progress Notes" by Defendant Edwards. (Oppo. at 19, Ex. P.) However, by Plaintiff's own admission, sick-call takes place only on Tuesdays and Thursdays, which means that as of June 10, 2006, the next sick-call day was Tuesday, June 13, 2006. There is no evidence to show that Defendants were responsible for Plaintiff's removal from the sick-call list for June 13, 2006. Although Plaintiff alleges again for the first time in opposition that Defendant Dr. Jain had to be responsible for the removal because she was the doctor on June 13, 2006, (Oppo. at 19), there is no evidence in the record to support this conclusory allegation.

On June 15, 2006, the following sick-call day, Plaintiff was examined by Defendant Dr. B. Jain. Plaintiff alleges that Defendant Jain inaccurately noted his symptoms in her medical report, such as the notation that his right eye was twitching which Plaintiff denies ever complaining of and the characterization of his rigid muscle in his back as simply a "tight lump in the back of head." (Compl. at 9-10.) Defendant Jain ordered Plaintiff to continue to take Benadryl and ordered an optometry evaluation and blood tests for Haldol and Artane, which is an antispasmodic drug that can also cause blurred vision. (Defs.' Mot. at 4.) The blood tests were performed the next day, June 16, 2006, and revealed that both substances were present in trace amounts. (Id.) Defendant Jain followed up on these results with Plaintiff on June 22, 2006.

On June 23, 2006, Plaintiff received the eye examination ordered by Defendant Jain. The results were a mild correction for farsightedness, *i.e.*, Plaintiff needed reading glasses, with no other reported vision problem.

B. Deliberate Indifference

Deliberate indifference to serious medical needs violates the Eighth Amendment's proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781 F.2d 769, 771 (9th Cir. 1986). A determination of

"deliberate indifference" involves an examination of two elements: the seriousness of the prisoner's medical need and the nature of the defendant's response to that need. See McGuckin, 974 F.2d at 1059.

A "serious" medical need exists if the failure to treat a prisoner's condition could result in further significant injury or the "unnecessary and wanton infliction of pain." McGuckin, 974 F.2d at 1059 (citing Estelle, 429 U.S. at 104). The existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain are examples of indications that a prisoner has a "serious" need for medical treatment. Id. at 1059-60 (citing Wood v. Housewright, 900 F.2d 1332, 1337-41 (9th Cir. 1990)).

A prison official is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825, 837 (1994). The prison official must not only "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," but he "must also draw the inference." Id. If a prison official should have been aware of the risk, but was not, then the official has not violated the Eighth Amendment, no matter how severe the risk. Gibson v. County of Washoe, 290 F.3d 1175, 1188 (9th Cir. 2002).

In order for deliberate indifference to be established, therefore, there must be a purposeful act or failure to act on the part of the defendant and resulting harm. See McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). A finding that the defendant's activities resulted in "substantial" harm to the prisoner is not necessary, however. Neither a finding that a defendant's actions are egregious nor that they resulted in significant injury to a prisoner is required to establish a violation of the prisoner's federal constitutional rights, McGuckin, 974 F.2d at 1060, 1061 (citing Hudson v. McMillian, 503 U.S. 1, 7-10 (1992) (rejecting "significant injury" requirement and noting that Constitution is violated "whether or not significant

injury is evident")), but the existence of serious harm tends to support an inmate's deliberate indifference claims, Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (citing McGuckin, 974 at 1060).

A claim of medical malpractice or negligence is insufficient to make out a violation of the Eighth Amendment. See Toguchi v. Chung, 391 F.3d 1051, 1060-61 (9th Cir. 2004); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981); see, e.g., Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998) (finding no merit in claims stemming from alleged delays in administering pain medication, treating broken nose and providing replacement crutch, because claims did not amount to more than negligence); McGuckin, 974 F.2d at 1059 (mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's 8th Amendment rights); O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (repeatedly failing to satisfy requests for aspirins and antacids to alleviate headaches, nausea and pains is not constitutional violation; isolated occurrences of neglect may constitute grounds for medical malpractice but do not rise to level of unnecessary and wanton infliction of pain); Anthony v. Dowdle, 853 F.2d 741, 743 (9th Cir. 1988) (no more than negligence stated where prison warden and work supervisor failed to provide prompt and sufficient medical care).

Applying these principles to the instant case, the Court concludes that Plaintiff's claims against Defendants are appropriate for summary judgment. First of all, there is no genuine issue of material fact as to Plaintiff's claim that the various ailments he suffered due to the single overdose of Haldol constituted a "serious" medical condition, see McGuckin, 974 F.2d at 1059-60. Furthermore, there is no evidence to support Plaintiff's claim that Defendants acted with deliberate indifference and consciously disregarded an excessive risk to Plaintiff's health in the treatment they provided after the overdose. See Farmer, 511 U.S. at 837.

In support of their motion, Defendants have submitted the declaration of Defendant S. Latham. (See Defs.' Mot. Attach. 3; Latham Decl.) Defendant Latham

states that she believed that the first dose of medicine that she gave to Plaintiff on June 8, 2006, was Neurontin. (Latham Decl. at 2.) Plaintiff concedes in his opposition that the medication error was "accidental" and that "no intent exists." (Oppo. at 22.) Plaintiff does not dispute that Defendant Latham later gave Plaintiff his regular prescribed dosage of Neurontin. Based on these facts, this isolated incident by Defendant Latham administering a single dose of wrong medication amounts to nothing more than negligence, which is not sufficient to make out a violation of the Eighth Amendment. See Toguchi, 391 F.3d at 1060-61; O'Loughlin, 920 F.2d at 617. Furthermore, there is no evidence to suggest that Defendant Latham knew or should have known that Plaintiff faced a "substantial risk of serious harm" since Plaintiff slept the rest of the day on June 8, 2006, and did not appear to be in any distress. Accordingly, it cannot be said that Defendant Latham failed to take reasonable steps to abate a "substantial risk of serious harm" where none was apparent. See Farmer, 511 U.S. at 837.

Defendants have also submitted the declaration of Dr. Jeff Gould, a board-certified psychiatrist and neurologist, who has reviewed Plaintiff's medical history to render a professional opinion about the overdose of medication Plaintiff received, the alleged resulting harm, and the quality of medical care rendered thereafter. (See Defs.' Mot. Attach. 2; Gould Decl.) Dr. Gould concludes that Plaintiff's condition following the overdose, which he characterizes as being "groggy and uncomfortable," was not serious. (Id. at 2.) Plaintiff continued to feel the effects of the overdose for several days, but he concedes that his symptoms were improving by the time he met with Defendant Jain. (Oppo. at 19.) Accordingly, the Court finds that Plaintiff's physical ailments, which were temporary and insubstantial, were not of the type that significantly affected his daily activities or constituted chronic and substantial pain to warrant a "serious" need for medical treatment. McGuckin, 974 F.2d at 1059-60; see e.g., O'Loughlin v. Doe, 920 F.2d at 617.

Furthermore, there is no evidence in the record to indicate that Defendants unreasonably delayed in providing treatment for Plaintiff's medical needs, assuming they

were serious. When Plaintiff notified prison officials about feeling unwell the day after the overdoes, he was promptly taken to the prison clinic where he was examined by a physician against whom Plaintiff makes no allegation of wrongdoing. After examining Plaintiff, Dr. Hutchinson found no reason to prescribe anything other than Benadryl and bed rest. When the symptoms persisted the next day, prison official again responded promptly with medical attention by taking Plaintiff to the CTC where he was examined by Defendant Edwards. The examination revealed that Plaintiff was in no apparent distress: Plaintiff's vital signs were stable; his heart rate, blood pressure, respiration and temperature were normal; his skin was cool and dry; his skin color was normal; and his responses as registered on the Glasgow Coma Scale were normal. (Id. at 3.) Plaintiff disputes the report as inaccurate, claiming that Nurse Kirkpatrick's observations of Plaintiff's vital signs at the time were "not within normal range." (Oppo. at 24.) However, Plaintiff has offered up no evidence by way of a declaration or other medical report to support this hearsay testimony as to Nurse Kirkpatrick's observations. Plaintiff also alleges that Defendant Edwards refused to draw blood because she felt it was unnecessary, and that the only thing she prescribed was more Benadryl and bed rest. This allegation is insufficient to show that she acted with deliberate indifference because "[a] difference of opinion between a prisoner-patient and prison medical authorities regarding treatment does not give rise to a § 1983 claim." Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981). Similarly, a showing of nothing more than a difference of medical opinion as to the need to pursue one course of treatment over another is insufficient, as a matter of law, to establish deliberate indifference, see Toguchi, 391 F.3d at 1058, 1059-60. Furthermore, there was no evidence to show that Defendant Edwards knew or should have known that Plaintiff faced a "substantial risk of serious harm" since her examination revealed that Plaintiff's vital signs were normal. Accordingly, it cannot be said that Defendant Edwards failed to take reasonable steps to abate a "substantial risk of serious harm" where none was apparent. See Farmer, 511 U.S. at 837. Defendant Edwards did not purposely act or fail to act in response to Plaintiff's medical needs as she examined

him when he came to CTC, prescribed treatment, and placed Plaintiff on the next sick-call list to be seen by a physician. See McGuckin, 974 F.2d at 1060.

In his opposition, Plaintiff makes much of the fact that the medical records state that the first dose of medication was identified as Haldol on June 10, 2006, even though Defendant Latham had stated that she did not know what the medicine was and that she had disposed of the bottle the day before. However, this inconsistency is not significantly probative on the issue of whether Defendants acted with deliberate indifference to Plaintiff's medical needs. It is undisputed that Plaintiff received medical attention as soon as he alerted prison staff to his physical ailments the following day, and that he continued to receive care in the days thereafter when his complaints persisted. Furthermore, the blood tests confirmed the presence of trace amounts of Haldol in Plaintiff's system, which is consistent with the identification of the unknown medication on June 10, 2006, according to the medical records.

With respect to the alleged damage to Plaintiff's vision, Dr. Gould notes that the medical records show some differences in Plaintiff's pupils and pupillary response between the right and left eyes but accounts for the difference as normal or due to a previous injury to the right eye which Plaintiff concedes resulted in some permanent damage. (Id.) (Oppo. at 24.) Dr. Gould concludes that Plaintiff's claim of permanent eye damage due to the medication is medically improbable. The blurry vision can be accounted for by the dose of Haldol which can cause sleepiness, dizziness and blurred vision. (Id. at 4.) According to Dr. Gould, Haldol has a half-life of 21 to 24 hours when administered orally, which means that after a single dose like the one Plaintiff received, its side effects would generally not be expected to last more than 24 hours. Dr. Gould states that in his own personal practice and in his review of medical literature, he has found no reports of cases where any amount of Haldol resulted in permanent vision damage. (Id.) Lastly, Dr. Gould states that "[c]ombining Haldol and Neurontin would not increase or affect in any way the serious side effects of either, although it is possible that the intended sedative affects of both might have lasted longer in combination, which

the records seem to bear out." (Id. at 4.) Although the question of whether the overdose was the direct cause of Plaintiff's blurry vision is a material fact, the Court finds that there is no genuine dispute over this material fact because the evidence presented is not such "that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

Lastly, with respect to the treatment Defendant Jain provided Plaintiff, the bulk of Plaintiff's allegations involve disagreements with how Defendant Jain documented Plaintiff's complaints in her medical report, copies of which he received on June 21, 2006. (Compl. at 9-10.) Plaintiff was seen by Defendant Jain as scheduled on June 15, 2006. Defendant Jain ordered the blood tests which Plaintiff had been seeking, as well as an urine analysis. Defendant Jain informed Plaintiff of the results of these tests on June 22, 2006. Plaintiff claims that Defendant Jain misinformed him that the results were "negative" when the actual test results showed that there were still trace amounts present. However, even assuming that Defendant Jain gave incorrect information to Plaintiff, this fact alone does not constitute deliberate indifference since these trace amounts did not warrant further medical attention; the amounts were "out of range" and otherwise undetectable. (Gould Decl., Ex. F.) Defendant Jain also provided treatment for Plaintiff's blurry vision with an opthalmogic examination on June 23, 2006. Lastly, Defendant Jain's alleged refusal to refer Plaintiff to a specialist is also without merit since a difference of opinion as to the course of treatment does not give rise to a § 1983 claim. See Franklin, 662 F.2d at 1344; see Toguchi, 391 F.3d at 1058, 1059-60.

Having reviewed the pleadings and all submitted papers on this matter, the Court finds that Plaintiff's allegations do not establish that Defendants acted with deliberate indifferent to his serious medical needs. Accordingly, Defendants are entitled to judgment on this claim as a matter of law. See Celotex Corp. v. Cattrett, 477 U.S. 317, 323 (1986).

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CONCLUSION

For the foregoing reasons, Defendants S. Latham, M. Edwards, and B. Jain's motion for summary judgment (Docket No. 31) is GRANTED.

Defendants Morgan and McLean's motion for summary judgment is DENIED as unnecessary. All claims against these defendants were dismissed in an earlier order, and they are no longer parties to this action. (See Docket Nos. 6 & 8.)

IT IS SO ORDERED.

DATED: 9/23/09

JEREMY FOGEL
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

MARC C DAWSON,

Plaintiff,

v.

S LATHAM, et al.,

Defendants.
_____/

Case Number: CV08-00741 JF

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 9/28/09, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marc Charles Dawson P13296
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Dated: 9/28/09

Richard W. Wieking, Clerk